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technical bulletin

Municipal Technical Advisory Service
Institute for Public Service, The University of Tennessee
In cooperation with the Tennessee Municipal League

September 21, 1976

AMENDMENTS TO PUBLIC WORKS REGULATIONS

Reproduced below are amendments to the original regulations of EDA for the Local Public Works Program, published in the Federal Register on August 23, 1976, previously distributed by MTAS. Particularly noteworthy are the amendments to section 316.10(C) & (D) as to the labor intensity factor and the "project area" for determination of per capita income, and to sections 316.4(c) and 316.5(a) which make possible use of the supplemental grant to satisfy the unmet funding needs of locally funded eligible projects.

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 316—LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTMENT PROGRAM

Clarifications and Corrections

Pursuant to the authority vested in it by section 107 of Title I of the Public Works Employment Act of 1976, (42 U.S.C. 6701 et seq.), the Economic Development Administration hereby amends 13 CFR Part 316 for the purpose of clarifying and correcting existing regulations.

Section 316.2 is amended by adding quotation marks to the phrase *General purpose unit of local government in the list of defined terms*. This correction makes the format of the definitions uniform.

Section 316.2 is also amended by adding a definition for the phrase "renovation, repair, or other improvements."

Section 316.4 is amended by revising subsection (b) to clarify the source and type of certification necessary for projects receiving direct grants under the Local Public Works Capital Development and Investment Program.

Sections 316.4(c) is amended to provide that the Federal share of any project for which a grant is made under this section shall be 100 percent of the cost of the project exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant.

Section 316.5(a) is likewise amended to provide that a grant under this section shall be in such amount as may be necessary to make the Federal share of the project 100 percent exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant.

The purpose of these two amendments is to make clear that a project for which an applicant has partial funding available is eligible under this program for 100 percent of the additional funding required. EDA believes that Congress

did not intend to exclude such projects from consideration by prohibiting the Federal share from being less than 100 percent of total project costs under Section 103 or 104 where partial financing is already available and committed for a project. Rather, EDA interprets Congressional intent in these sections to be that no applicant be required to provide any matching funds but that where State or local funds are already available, such funds can and should be used in financing the project.

Section 316.10(a) (2) (1) (C) is amended to change the third factor in the project selection formula to the relationship of labor cost to total project cost and delete the cost per person-month of employment factor. This new factor is limited and necessary to help EDA maintain a reasonable balance between new construction and renovation/rehabilitation activities, both of which are provided for in the Act.

Section 316.10(a) (2) (1) (D) is amended to clarify the meaning of project area as used in the fourth factor of the project selection formula. Project area is now defined as the applicant's jurisdiction.

Section 316.10(b) is amended by adding a new paragraph (10). It authorizes the rejection of applications which contain inaccurate information. This provision is necessary to allow the agency to evaluate applications within the 60-day statutory time limit.

Section 316.10(e) is amended by changing its language to more accurately express the types of project costs which are ineligible for funding under the Program.

Section 316.10 is amended by adding a new paragraph (4) to provide that projects which have ratios of labor costs to total project costs in excess of 80 percent and less than 10 percent will be rejected and denied. This provision is necessary to facilitate the undertaking of new construction projects.

Because the material contained herein relates to a grant program administered by the Economic Development Administration, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of the proposed

rulemaking opportunity for public participation and delay in effective date are inapplicable.

However, in accordance with the spirit of public policy set forth in 5 U.S.C. 553, interested persons may submit written comments or suggestions regarding these amendments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20203, within thirty days from the date of publication. All suggestions will be considered in revising or amending these regulations. Until such time as further changes are made, however, the amended regulations shall remain in effect, thus permitting the public business to proceed more expeditiously.

Consideration has been given as to whether matters set forth in these amendments constitute a major proposal with an inflationary impact within the meaning of OMB Circular No. A-107 and the interpretative guidelines issued by the Department of Commerce. It has been determined that these regulations do not constitute action requiring an inflationary impact statement.

In consideration of the foregoing, 13 CFR Part 316 is hereby amended:

§ 316.2 [Amended]

1. Section 316.2 is corrected by adding quotation marks around the phrase, *General purpose unit of local government*, so that the definition reads as follows:

"General purpose unit of local government" means any city, county, town, parish, Indian tribe, or any other "unit of general local government" as included within the definition of that term by Section 4201(4) of the Intergovernmental Cooperation Act of 1968. (42 U.S.C. 4201 et seq.)

2. Section 316.2 is amended by adding after the definition of "Public Works" the following new definition:

"Renovation, repair or other improvements" means only those activities which either substantially or appreciably increase the value or prolong the life of a

(over)

public facility and excludes those activities which keep the public facility in ordinary efficient operating condition during its probable useful life.

§ 316.4 [Amended]

3. Section 316.4 is amended by revising paragraph (b) to read as follows:

(b) Applications under this section will be approved only if the applicant submits with its application, if applicable, and required by EDA, a written certification from the other Federal agency/agencies primarily concerned with projects of the type involved in the application that the project meets all applicable Federal statutory and regulatory requirements to the extent necessary to assure the utilization of the project for the services intended.

4. Section 316.4 is amended by revising subsection (c) to read as follows:

(c) The Federal share of any project for which a grant is made under this section shall be 100 per centum of the cost of the project exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant.

§ 316.5 [Amended]

5. Section 316.5 is amended by revising paragraph (a) to read as follows:

(a) The Assistant Secretary may make supplemental grants for the purpose of increasing the Federal contribution to 100 percent of the project cost (exclusive of any funds budgeted and available or otherwise specifically committed for the project by the applicant) for any Federally assisted public works project authorized by any Federal law other than the Local Public Works Act if the applicant submits with its application: . . .

§ 316.10 [Amended]

6. Section 316.10(a)(2)(i)(C) is amended and revised to read as follows:

(C) The relationship of labor cost to total project cost, defined as the ratio of total wages to total project cost. In formulating project proposals, applicants

should bear in mind the intent of the Act to reduce unemployment generally, and to give due consideration to the amount of unemployment and underemployment in the construction and construction-related industries. As previously indicated, projects eligible for funding would include, but are not limited to, such local public works projects as municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads, civic centers, museums, health, education and social service facilities, convention centers, and the upgrading of existing facilities through renovation, repair, and other related improvements. To implement the legislative objective of assisting the construction and construction-related industries: (1) projects having labor costs greater than 35 percent of total project costs, but not more than 80 percent, will receive the maximum score for this factor; and (2) projects having labor costs ranging from 10 to 35 percent of total project costs will be ranked according to their respective percentages, with projects having 35 percent receiving the maximum score for this factor. Finally, it should be emphasized that supplemental assistance provided for under the Act will be considered as part of the total project costs; the latter is defined as funds from all sources, whether Federal, State, or local. The relationship of labor cost to total project cost will constitute 30 percent of a project's basic rank.

7. Section 316.10(a)(2)(i)(D) is revised to read as follows:

(D) The level of income prevailing in the project area (which for purposes of this factor is defined as the applicant's jurisdiction). This factor will constitute 15 percent of a project's basic rank.

8. Section 316.10(b) is amended by adding the following new paragraph (10):

(10) It contains information which in the opinion of the Assistant Secretary is accurate.

9. Section 316.10(e) is amended by substituting the words "or A/E costs" for "and other A/E costs," so that the paragraph reads as follows:

"(e) Project costs for administration, plans, specifications, estimates or other A/E costs, which have been incurred prior to the date of application, will not be funded."

10. Section 316.10 is amended by adding the following new paragraph (1):

"(1) Projects with extremely high ratios of labor costs to total project costs (greater than 80 percent) and projects with extremely low ratios of labor costs to total project costs (less than 10 percent) will be rejected and denied."

AUTHORITY: Title I, Pub. L. 94-369; (July 22, 1976); 42 U.S.C. 6701 et seq.; 90 Stat. 999; and Department of Commerce Organization Order 10-4 (September 30, 1975) as amended 40 FR 56702, as amended at 40 FR 58878 and at 41 FR 37829.

Effective date: This amendment becomes effective on September 13, 1976.

It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular No. A-107.

Dated: September 9, 1976.

JOHN W. EDEN,
Assistant Secretary for
Economic Development.

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